

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JONATHAN A. GASTON,

Plaintiff(s),

v.

BANK OF AMERICA,

Defendant(s).

Case No. 2:16-CV-2389 JCM (NJK)

ORDER

Presently before the court is the matter of *Gaston v. Bank of America*, case number 2:16-cv-02389-JCM-NJK.

On October 17, 2016, defendant Bank of America filed a motion to dismiss. (ECF No. 5). Responses were due by November 3, 2016.

To date, *pro se* plaintiff Jonathan Gaston has yet to file a response. Pursuant to Local Rule 7-2(d), “the failure of an opposing party to file points and authorities in response to any motion . . . constitutes a consent to the granting of the motion.” LR 7-2(d). Thus, by failing to file a timely response, plaintiff has consented to the granting of defendant’s motion to dismiss. *See United States v. Hvass*, 355 U.S. 570, 574–75 (1958) (holding that local rules have the force of law).

Nevertheless, before dismissing an action for failure to comply with a local rule, the court considers several factors: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

After weighing these factors and reviewing the underlying filings, the court finds dismissal appropriate and will grant defendant’s motion to dismiss. Dismissal serves the public’s interest in

1 expeditious resolution of litigation and allows the court to effectively manage its docket. While
2 public policy favors the disposition of cases on their merits, forcing defendant to wait for plaintiff,
3 who has been unresponsive in the proceedings thus far, would likely prejudice the defendant.
4 Approximately one month has elapsed since the expiration of plaintiff's response deadline, and
5 plaintiff has yet to file an opposition to defendant's motion to dismiss. While the court
6 acknowledges that plaintiff is appearing *pro se*, *pro se* litigants are nonetheless bound by the same
7 rules of procedure. *See id.* at 54.

8 Accordingly,

9 IT IS HEREBY ORDERED that defendant's motion to dismiss (ECF No. 5) be, and the
10 same hereby is, GRANTED.

11 IT IS FURTHER ORDERED that plaintiff's complaint (ECF No. 1-1) be, and the same
12 hereby is, DISMISSED WITHOUT PREJUDICE.

13 The clerk shall close the case.

14 DATED November 30, 2016.

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16 UNITED STATES DISTRICT JUDGE